

# Offices of Inspectors General and Law Enforcement Authority: In Brief

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## Summary

Federal inspectors general (IGs) have been granted substantial independence and powers to combat waste, fraud, and abuse within designated federal departments and agencies. To execute their missions, offices of inspector general (OIGs) conduct and publish audits and investigations—among other duties. Established by public law as permanent, nonpartisan, and independent offices, OIGs exist in more than 70 federal agencies, including all departments and larger agencies, along with numerous boards and commissions and other entities. Many OIGs have been vested with law enforcement authority to assist their investigations.

This report provides background on federal offices of inspectors general and their law enforcement authorities in investigations.

In this report, law enforcement authority is generally defined as having the legal authority to

- carry a firearm while engaged in official duties;
- make an arrest without a warrant while engaged in official duties; and
- seek and execute warrants for arrest, search of premises, or seizure of evidence.

This report identifies the laws and regulations that vest certain OIGs with law enforcement authority, which permits the use of guns and ammunition. This report also describes some of the requirements and expectations of OIGs that have law enforcement authority, and includes some reasons that OIGs have expressed a need for law enforcement authority.

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## Introduction

Federal inspectors general (IGs) have been granted substantial independence and powers to combat waste, fraud, and abuse within designated federal departments and agencies. To execute their missions, offices of inspector general (OIGs) conduct and publish audits and investigations—among other duties.

In some cases, employees within federal offices or inspectors general are vested with law enforcement authority. For the purposes of this report, law enforcement authority is generally defined as having the legal authority to

- carry a firearm while engaged in official duties;<sup>1</sup>
- make an arrest without a warrant while engaged in official duties; and
- seek and execute warrants for arrest, search of premises, or seizure of evidence.<sup>2</sup>

According to some OIGs vested with law enforcement authority, these authorities are essential to certain missions of the office. In some cases, for example, OIG law enforcement officers conduct investigations that pose potential safety risks.

This report provides a list of the statutes and regulations that are used to vest OIGs with law enforcement authority. It also provides resources that add context to what some OIGs say is a need for law enforcement authority in their offices.

## Why Purchase Weapons and Ammunition?

Each federal agency, including OIGs, has a unique mission, and, therefore, a unique purpose for its law enforcement authority. In some cases, especially when Congress and the public demonstrate concern about the agency's weapons procurement, an agency may release a public statement detailing its law enforcement authority and its need to acquire weapons or ammunition.

For example, in August 2012, the Social Security Administration's (SSA's) OIG posted information on its blog explaining an ammunition purchase that garnered public attention. According to an excerpt from the post,

Media reports expressed concerns over the type of ammunition ordered. In fact, this type of ammunition is standard issue for many law enforcement agencies. OIG's special agents use this ammunition during their mandatory quarterly firearms qualifications and other training sessions, to ensure agent and public safety. Additionally, the ammunition our agents use is the same type used at the Federal Law Enforcement Training Center.<sup>3</sup>

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<sup>1</sup> Offices of inspectors general are "independent and objective units" within federal departments or agencies. Law enforcement authority permits certain OIG employees to carry firearms, among other authorities. Generally, an agency contracting office—not the OIG—purchases the goods and services an OIG needs to perform its mission, such as weapons, ammunition, and other law enforcement-related equipment and supplies. The Special Inspector General for Afghanistan Reconstruction, however, is provided explicit statutory contracting authority in its authorizing legislation (P.L. 110-181; National Defense Authorization Act for Fiscal Year 2008).

<sup>2</sup> Component agencies within a larger federal department or entity may be vested with statutory law enforcement authorities. The law enforcement authorities of federal agencies other than OIGs are beyond the scope of this report.

<sup>3</sup> Social Security Administration Office of Inspector General, "Social Security's OIG Responds to Concerns Over Ammunition Procurement," at <http://oig.ssa.gov/newsroom/blog/2012/08/social-securitys-oig-responds-concerns-over-ammunition-procurement>.

In another, more recent example, the U.S. Department of Agriculture's (USDA's) OIG received inquiries about OIG solicitations for weapons and body armor. The procurement pertained to the OIG's effort to replace automatic firearms with new semi-automatic firearms.<sup>4</sup> On May 19, 2014, Mr. Paul Feeney, deputy counsel at the OIG, sent the following response to questions about the procurement:

The Inspector General Act of 1978 authorized OIG to, among other duties, pursue criminal activity, fraud, and abuses impairing USDA's program and operations. The criminal investigation responsibilities and impact of OIG are quite extensive—from fiscal year 2012 through March 2014, OIG investigations pertaining to USDA operations have obtained over 2,000 indictments, 1,350 convictions, and over \$460 million in monetary results. OIG Special Agents are authorized to make arrests, execute warrants, and carry firearms.

Regarding the need for weapons' procurements, and for defensive vests, USDA OIG's Investigations division conducts hundreds of criminal investigations each year, some of which involve OIG agents, USDA employees, and/or members of the public facing potentially life threatening situations. OIG special agents regularly conduct undercover operations and surveillance. The types of investigations conducted by OIG special agents include criminal activities such as fraud in farm programs; significant thefts of Government property or funds; bribery and extortion; smuggling; and assaults and threats of violence against USDA employees engaged in their official duties.<sup>5</sup>

## Sources That Vest OIGs with Law Enforcement Authority

Generally, there are three ways that an OIG can be vested with law enforcement authority.

- First, and most commonly, an OIG can be vested with law enforcement explicitly pursuant to Section 6(e)(3) of the IG Act of 1978, as amended (5 U.S.C. (IG Act) Appendix, Section 6(e)(4); hereinafter referred to as the IG Act).
- Second, an OIG can be vested with law enforcement authority by the Attorney General pursuant to criteria articulated in several provisions of Section 6(e) of the IG Act of 1978.
- Third, an OIG can be vested with law enforcement authority pursuant to statute outside of the IG Act of 1978, as is the case with six federal entities described below.

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<sup>4</sup> Pursuant to the Gun Control Act (GCA) of 1968, the term "semiautomatic rifle" is defined as any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge (18 U.S.C. §921(a)(28)). "Semiautomatic pistol" and "rifle" are similarly defined in the Code of Federal Regulations (27 C.F.R. §478.11).

By comparison, pursuant to the 1934 National Firearms Act (NFA), the term "machine gun" is defined as any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person (26 U.S.C. §5845(b)). Enacted as part of the Internal Revenue Code, the NFA levies taxes on all aspects of the manufacture/importation and distribution of such firearms, and requires that these firearms and their owners be registered at every point the firearms change ownership in the chain of commerce.

<sup>5</sup> Information provided to the author by USDA's OIG on May 19, 2014.

# The Inspector General Act of 1978

## Explicit Statutory Authority

As shown in **Table 1**, the IG Act provides direct law enforcement authority to 25 federal entities explicitly named in Section 6(e)(3) of the act.

**Table 1. Federal Offices of Inspectors General Vested with Law Enforcement Authority Pursuant to Section 6(e)(3) of the IG Act of 1978, as Amended**

Department of Commerce	Federal Deposit Insurance Corporation
Department of Education	Federal Emergency Management Agency <sup>a</sup>
Department of Energy	General Services Administration
Department of Health and Human Services	National Aeronautics and Space Administration
Department of Homeland Security	Nuclear Regulatory Commission
Department of Housing and Urban Development	Office of Personnel Management
Department of the Interior	Railroad Retirement Board
Department of Justice	Small Business Administration
Department of Labor	Social Security Administration
Department of State	Tennessee Valley Authority
Department of Transportation	Agency for International Development
Department of the Treasury	Environmental Protection Agency
Department of Veterans Affairs	

**Source:** 5 U.S.C. (IG Act) Appendix, §6(e)(3).

- a. The Federal Emergency Management Agency (FEMA) is a component agency of the Department of Homeland Security (DHS), and, therefore, the DHS IG oversees this component agency as well as other component agencies. FEMA does not have its own OIG. Therefore, although 25 federal entities are explicitly vested with law enforcement authority in the IG Act, in practice, 24 OIGs are vested with law enforcement authority.

## Authority Delegated by the Attorney General

As noted earlier, pursuant to Section 6 of the IG Act, the Attorney General is authorized to delegate law enforcement authority when

1. an OIG “is significantly hampered in the performance of responsibilities ... as a result of the lack of such powers”;
2. “assistance from other law enforcement agencies is insufficient to meet the need for such powers”; and
3. “adequate internal safeguards and management procedures exist to ensure proper exercise of such powers” (5 U.S.C. (IG Act) Appendix, Section 6(e)(2)).<sup>6</sup>

<sup>6</sup> Federal law and regulation (28 U.S.C. §566(c), 28 U.S.C. §561, and 28 C.F.R. §0.112) authorize the U.S. Marshals Service to deputize certain federal employees—which in some cases include OIG employees—with the ability to use existing law enforcement authorities across state boundaries to pursue particular investigations. See also U.S. Marshals Service, “17.11 Special Deputation Program, Tactical Operations Division (TOD).” According to the U.S. Marshals

The Attorney General has vested the OIGs within the 10 agencies listed below with law enforcement authority.

- The National Archives and Records Administration
- Amtrak
- The Peace Corps
- The Board of Governors of the Federal Reserve and Consumer Financial Protection Bureau
- The Corporation for National and Community Service
- The Export-Import Bank of the United States
- The National Science Foundation
- The Federal Housing Finance Agency
- The Securities and Exchange Commission
- Special Inspector General for Afghanistan Reconstruction.<sup>7</sup>

## **Law Enforcement Responsibilities and Requirements Pursuant to the IG Act**

The IG Act authorizes the Attorney General to promulgate guidelines “that govern the use of law enforcement powers” for these OIGs.<sup>8</sup> On December 8, 2003, then-Attorney General John Ashcroft promulgated such guidelines, providing OIGs further detail on their law enforcement authorities’ scope and limitations.

Within these guidelines, Mr. Ashcroft wrote that employees within the OIGs who qualify for law enforcement authority are required to complete various training, including the Basic Criminal Investigator Training Program (or equivalent) and initial and “refresher firearms training and qualification.”<sup>9</sup> OIGs are also required to heed the Department of Justice’s (DOJ’s) deadly force policy.<sup>10</sup>

According to Mr. Ashcroft’s guidelines, OIGs vested with law enforcement authority through the IG Act must provide “periodic refresher” training in trial processes; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning and defensive tactics.<sup>11</sup> Additionally, the OIGs are responsible for following other

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Service, certain employees within the OIGs of the following agencies are currently deputized by the Marshals Service: Amtrak, the Government Printing Office, the Library of Congress, the National Science Foundation, the Office of Personnel Management, the Smithsonian Institution, and the Social Security Administration. Additionally, Department of Labor OIG employees currently involved in a joint task force under the direction of the Federal Bureau of Investigation have Marshals Service deputation. Information provided to the author from the U.S. Marshal Service via email on July 24, 2014.

<sup>7</sup> Information provided from the Department of Justice to the author via email on September 8, 2014.

<sup>8</sup> 5 U.S.C. (IG Act) Appendix, §6(e)(4)

<sup>9</sup> Office of the Attorney General, “Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority,” p. 2, at <https://www.ignet.gov/pande/standards/agleguidelines.pdf>. Training is required to take place at the Federal Law Enforcement Training Center.

<sup>10</sup> U.S. Department of Justice, “Policy Statement: Use of Deadly Force,” at <http://www.justice.gov/ag/readingroom/resolution14b.htm>.

<sup>11</sup> Office of the Attorney General, “Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority,” p. 2, at <https://www.ignet.gov/pande/standards/agleguidelines.pdf>.

DOJ law enforcement related policies and guidelines, must consult with DOJ before using electronic surveillance, and must receive other approval before beginning an undercover investigation.<sup>12</sup>

## Other OIGs with Law Enforcement Authority

### Statutes That Vest Law Enforcement Authority

As shown in **Table 2**, five additional OIGs are provided law enforcement authority through laws outside of the IG Act.

**Table 2. Department and Agency OIGs with Law Enforcement Authority Provided by Statutes Outside of the IG Act of 1978, as Amended**

Agency	Statutory Law Enforcement Authority
Department of Agriculture	Agriculture and Food Act of 1981; P.L. 97-98, Sec. 1337; 95 Stat. 1294; 7 U.S.C. §2270.
Department of Defense	Some law enforcement authority is provided by the National Defense Authorization Act of 1998; P.L. 105-85, Sec. 1071; 111 Stat. 1897; 10 U.S.C. §1585a; with authority to carry firearms delegated from the Secretary pursuant to 10 U.S.C. §1585.
U.S. Postal Service	Omnibus Consolidated Appropriations Act, 1997; P.L. 104-208, Sec. 207; 110 Stat. 3009-379; 39 U.S.C. §2009 note.
Treasury Inspector General for Tax Administration	Internal Revenue Service Restructuring and Reform Act of 1998; P.L. 105-206, Sec. 1103; 112 Stat. 707; 5 U.S.C. Appendix, §8D.
Special Inspector General for the Troubled Asset Relief Program	Special Inspector General for the Troubled Asset Relief Program Act of 2009; P.L. 111-15; 12 U.S.C. §5231(d)(3).

## Inspector General Law Enforcement Staff Statistics

The Department of Justice's Bureau of Justice Statistics maintains a *Census on Federal Law Enforcement Officers*, which includes data on the number of federal employees who are authorized to carry firearms.<sup>13</sup> The most recent report available states that 33 OIGs had a total of 3,501 agents who were authorized to carry firearms in September 2008.<sup>14</sup> Additionally, the report states that no law enforcement officers within an OIG were assaulted or injured in 2008.<sup>15</sup>

<sup>12</sup> Ibid. For additional information on the requirements associated with an OIG's receipt of law enforcement authority, see Glenn A. Fine, "The New Statutory Law Enforcement Authority for OIG Criminal Investigators," *The Journal of Public Inquiry*, Spring/Summer 2003, pp. 15-22, at <http://www.ignet.gov/randp/sp03jpi.pdf>.

<sup>13</sup> U.S. Department of Justice, "Federal Law Enforcement Officers, 2008," June 2012, at <http://www.bjs.gov/content/pub/pdf/fleo08.pdf>.

<sup>14</sup> Ibid., p. 6.

<sup>15</sup> Ibid., p. 9.



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